

DETAILED ACTION

Receipt is acknowledged of amendment filed on August 4, 2009. Claims 1, 7, 8, 11, 12, 22, 27 are pending.

The claim objections as indicated in the previous Office action dated May 5, 2009, are withdrawn in part in view of the claim amendment made by applicant.

The claim rejection made under 35 U.S.C. § 103 (a) as indicated in the same Office action is maintained for reasons of record.

Claim Objections

Claim 27 is objected to as the claim contains repetitive limitations, including cetyl alcohol, vitamin E, which is inclusive of Vitamin E linoleate, tocopheryl acetate, and aloe extract, which is equivalent to aloe vera extract. Appropriate correction is required.

Response to Amendment

Applicant has inserted statement regarding related applications which indicates that the present application claims the priority benefit of U.S. Provisional application S/N 60/740,446, filed November 29, 2005. The statement in the amendment also indicates that the present application is a continuation-in-part of U.S. Paten Application S/N 10/006,014. However, these two applications were filed after the filing of the present application, thus the amendment to the specification is improper. See 37 CFR 1.78 and MPEP § 201.11.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7, 8, 11, 12, 22, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter (US 6224888 B1) in view of Wadsworth (WO 01/15537 A1) and Ferrari et al. (US 6402408 B1).

Vatter teaches lipstick composition comprising candelilla wax, ozokerite wax, pigments in castor oil. The lipstick formulation of Example I further contains 4.1 % of beeswax (claim 7), 7 % of lanolin (claim 8). Using sorbitan esters as an emollient emulsifier is taught in col. 5, lines 43 – 60. Further adding suitable emollient oils that impart viscosity, “tackiness and drag properties” is also suggested in col. 6, lines 18 – 33. The suitable oils include shea butter, jojoba oil, lanolin, isopropyl palmitate, isopropyl myristate, tocopheryl acetate, tocopheryl linoleate, and plant-based triglycerides, etc. See instant claims 1 and 27. Vatter further teaches using up to about 90 %, more preferably from 1-50%, even more preferably from about 5-40 % of solidifying agents to solidify a liquid base materials to be used in a cosmetic composition See col. 8, lines 11 – 30. Paraffin wax is mentioned in col. 8, line 40. See instant claim 22. Using paraffin wax, which is another name for white petrolatum, to solidify the cosmetic composition as taught by the reference would have been obvious.

While Vatter teaches using essential oils from plants as emollient oils, the reference fails to teach Morinda citrifolia seed oil and macadamia oil.

Wadsworth teaches using Morinda citrifolia seed oil as an antioxidant for various applications including making cosmetics. See p. 4, lines 21 – 25.

Vatter and Wadsworth do not specifically teach the amount of the essential oil to use in a cosmetic.

Ferrari teaches that it is a well-known practice in cosmetic art to use additives such as antioxidants or essential oils, particularly for lipstick formulations, in the concentration of up to 20 or 10 % by weight of the total weight of the composition. See col. 7, lines 11 - 22. The reference also teaches macadamia oil contains a high content of triglyceride suitable for cosmetic formulations. See col. 6, line 48.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Vatter by further incorporating Morinda citrifolia seed oil as motivated by Wadsworth because Vatter teaches incorporating essential oils from plants and Wadsworth teaches using Morinda citrifolia seed oil as an antioxidant for cosmetics. Since Ferrari teaches essential oils or antioxidants are conventionally used in an amount up to 20 or 10 % by weight, the skilled artisan would have had a reasonable expectation of successfully producing a stable lipstick composition with improved antioxidant property. Further incorporating macadamia oil to the cosmetic of Vatter would have been also obvious in view of Ferrari because both of the references teach using plant-based hydrocarbon oils to make cosmetic products.

Response to Arguments

Applicant's arguments filed August 4, 2009 have been fully considered but they are not persuasive.

Applicant asserts the pending obviousness rejection should be withdrawn as the present application claims a priority date of December 5, 2000, which predates the publication date of Wadsworth. However, according to the decision by the Office of Petition dated October 27, 2009, applicant's petition to claim priority to a prior-filed application (s/n 60/251,416) has been

dismissed. Thus, the Wadsworth reference is still a valid prior art against the present invention, and the obviousness rejection as indicated in the previous Office action is maintained.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See DE 4426148 A1, teaching shea butter is used in cosmetics including lip sticks to protect and care for the skin; JP 1998-381228, teaching macadamia nut oil is used in lipstick formulations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611